found at the controlled premises relating to this Act;

(c) Making a physical inventory of all controlled substances and listed chemicals on-hand at the premises;

(d) Collecting samples of controlled substances or listed chemicals (in the event any samples are collected during an inspection, the inspector shall issue a receipt for such samples on DEA Form 84 to the owner, operator, or agent in charge of the premises);

(e) Checking of records and information on distribution of controlled substances or listed chemicals by the registrant or regulated person (i.e., has the distribution of controlled substances or listed chemicals increased markedly within the past year, and if so why);

* * * * *

4. Section 1316.09 is amended by revising paragraph (a)(3) to read as follows:

§ 1316.09 Application for administrative inspection warrant.

(a) * * *

(3) A statement relating to the nature and extent of the administrative inspection, including, where necessary, a request to seize specified items and/or to collect samples of finished or unfinished controlled substances or listed chemicals;

* * * * *

Dated: May 1, 1995.

Stephen H. Greene,

Deputy Administrator, Drug Enforcement Administration.

[FR Doc. 95–14978 Filed 6–21–95; 8:45 am]

BILLING CODE 4410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5225–1]

Determination of Attainment of Ozone Standard by Ashland, Kentucky, Northern Kentucky (Cincinnati Area), Charlotte, North Carolina, and Nashville, Tennessee, and Determination Regarding Applicability of Certain Reasonable Further Progress and Attainment Demonstration Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is determining, through direct final procedure, that the Ashland, Kentucky, Northern Kentucky, Charlotte-Gastonia, North Carolina, and Nashville, Tennessee ozone nonattainment areas have attained the National Ambient Air Quality Standard (NAAQS) for ozone. This determination is based upon three years of complete, quality assured ambient air monitoring data for the years 1992–94 that demonstrate that the ozone NAAQS has been attained in these areas. On the basis of this determination, EPA is also determining that certain reasonable further progress and attainment demonstration requirements, along with certain other related requirements, of Part D of Title 1 of the Clean Air Act are not applicable to the areas for so long as the areas continue to attain the ozone NAAQS. In the proposed rules section of this **Federal Register**, EPA is proposing these determinations and soliciting public comment on them. If adverse comments are received on this direct final rule, EPA will withdraw this final rule and address these comments in a final rule on the related proposed rule which is being published in the proposed rules section of this **Federal Register**.

DATES: This action will be effective August 7, 1995 unless notice is received by July 24, 1995 that any person wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: A copy of the air quality data and EPA's analysis are available for inspection at the following address:

Environmental Protection Agency, Region 4 Air Programs Branch, 345 Courtland Street, NE, Atlanta, Georgia 30365

Commonwealth of Kentucky, Division of Air Quality, Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, 803 Schenkel Lane, Frankfort, Kentucky 40601

State of North Carolina, Air Quality Section, Division of Environmental Management, North Carolina Department of Environment, Health, and Natural Resources, Raleigh, North Carolina 27626

Environmental Management Division, Mecklenburg County Department of Environmental Protection, 700 N. Tryon Street, Charlotte, North Carolina 28202–2236

State of Tennessee, Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531

Bureau of Environmental Health Services, Metropolitan Health Department, Nashville-Davidson County, 311–23rd Avenue, North, Nashville, Tennessee 37203

Written comments can be mailed to: Kay Prince, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4, Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4221.

FOR FURTHER INFORMATION CONTACT: Kay Prince, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region 4, Environmental Protection Agency, 345 Courtland Street, NE, Atlanta, Georgia 30365. The telephone number is 404/347–3555 extension 4221.

SUPPLEMENTARY INFORMATION:

I. Background

Subpart 2 of Part D of Title I of the Clean Air Act (CAA) contains various air quality planning and state implementation plan (SIP) submission requirements for ozone nonattainment areas. EPA believes it is reasonable to interpret provisions regarding reasonable further progress (RFP) and attainment demonstrations, along with certain other related provisions, so as not to require SIP submissions if an ozone nonattainment area subject to those requirements is monitoring attainment of the ozone standard (i.e., attainment of the NAAQS demonstrated with three consecutive years of complete, quality assured air quality monitoring data). As described below, EPA has previously interpreted the general provisions of subpart 1 of part D of Title I (sections 171 and 172) so as not to require the submission of SIP revisions concerning RFP, attainment demonstrations, or contingency measures. As explained in a memorandum dated May 10, 1995, from John S. Seitz, Director, Office of Air Quality Planning and Standards to the Regional Air Division Directors, entitled Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard, EPA believes it is appropriate to interpret the more specific RFP, attainment demonstration and related provisions of subpart 2 in the same manner.

First, with respect to RFP, section 171(1) states that, for purposes of part D of Title I, RFP ''means such annual incremental reductions in emissions of the relevant air pollutant as are required by this part or may reasonably be required by the Administrator for the

purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirements of subpart 2 for classified ozone nonattainment areas (such as the 15 percent plan requirement of section 182(b)(1)), the stated purpose of RFP is to ensure attainment by the applicable attainment date.[1] If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled and EPA does not believe that the area need submit revisions providing for the further emission reductions described in the RFP provisions of section 182(b)(1).

EPA notes that it took this view with respect to the general RFP requirement of section 172(c)(2) in the General Preamble for the Interpretation of title I of the Clean Air Act Amendments of 1990 (57 FR 13498 (April 16, 1992)), and it is now extending that interpretation to the specific provisions of subpart 2. In the General Preamble, EPA stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the ''requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the state will make RFP towards attainment will, therefore, have no meaning at that point.'' (57 FR at 13564.)[2]

Second, with respect to the attainment demonstration requirements of section 182(b)(1), an analogous rationale leads to the same result. Section 182(b)(1) requires that the plan provide for ''such specific annual reductions in emissions * * * as necessary to attain the national primary ambient air quality standard by the attainment date applicable under this Act.'' As with the RFP requirements, if an area has in fact monitored attainment of the standard, EPA believes there is no need for an area to make a further submission containing additional measures to achieve attainment. This is also consistent with the interpretation of certain section 172(c) requirements provided by EPA in the General Preamble to title I, as EPA stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since ''attainment will have been reached.'' (57 FR at 13564; *see also* September 1992 Calcagni memorandum at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

EPA emphasizes that the lack of a requirement to submit the SIP revisions discussed above exists only for as long as an area designated nonattainment continues to attain the standard. If EPA subsequently determines that such an area has violated the NAAQS, the basis for the determination that the area need not make the pertinent SIP revisions would no longer exist. The EPA would notify the State of that determination and would also provide notice to the public in the **Federal Register**. Such a determination would mean that the area would have to address the pertinent SIP requirements within a reasonable amount of time, which EPA would establish taking into account the individual circumstances surrounding the particular SIP submissions at issue. Thus, a determination that an area need not submit one of the SIP submittals amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

The states must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR Part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR Part 58 requirements and other relevant EPA guidance and recorded in EPA's Aerometric Information Retrieval System (AIRS).

The determinations that are being made with this **Federal Register** notice are not equivalent to the redesignation of the areas to attainment. Attainment of the ozone NAAQS is only one of the criteria set forth in section 107(d)(3)(E) that must be satisfied for an area to be redesignated to attainment. To be redesignated the state must submit and receive full approval of a redesignation request for the area that satisfies all of the criteria of that section, including the requirement of a demonstration that the improvement in the area's air quality is due to permanent and enforceable reductions and the requirements that the area have a fully approved SIP meeting all of the applicable requirements under section 110 and Part D and a fully approved maintenance plan.

Furthermore, the determinations made in this notice do not shield an area from future EPA action to require emissions reductions from sources in the area where there is evidence, such as photochemical grid modeling, showing that emissions from sources in the area contribute significantly to nonattainment in, or interfere with maintenance by, other nonattainment areas. EPA has authority under sections 110(a)(2)(A) and 110(a)(2)(D) to require such emission reductions if necessary and appropriate to deal with transport situations.

II. Analysis of Air Quality Data

The EPA has reviewed the ambient air monitoring data for ozone (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS) for the Ashland, Northern Kentucky, Charlotte-Gastonia, and Nashville ozone nonattainment areas in the Commonwealth of Kentucky and the States of North Carolina and Tennessee from 1992 through the present time. On the basis of that review EPA has concluded that the areas attained the ozone standard during the 1992–94 period and continue to attain the standard at this time. The monitors in the Northern Kentucky portion of the Cincinnati ozone nonattainment area have not recorded a violation of the ozone standard since 1988 and have recorded only one exceedance (Campbell County monitor) during the 1992–94 period. Additionally, all monitors in the Cincinnati ozone nonattainment area have an expected exceedance rate of less than 1.1 for the 1992–94 period. The Ashland portion of the Ashland-Huntington area has air quality data showing attainment of the standard for the period 1991–94. Both the Boyd County and Greenup County monitors have recorded 2 exceedances in the 1992–94 period. All monitors in the Ashland-Huntington area have an expected exceedance rate for the 1992–94 period of less than 1.1. All monitors in the Charlotte-Gastonia area have an expected exceedance rate of less than 1.1 for the 1992–94 period with no violations recorded at any monitor for the 1990–94 period. Two of the monitors in Mecklenburg County have recorded two exceedances during the 1992–94 period, with no exceedance at

[1] EPA notes that paragraph (1) of subsection 182(b) is entitled ''Plan Provisions For Reasonable Further Progress'' and that subparagraph (B) of paragraph 182(c)(2) is entitled ''Reasonable Further Progress Demonstration,'' thereby making it clear that both the 15 percent plan requirement of section 182(b)(1) and the 3 percent per year requirement of section 182(c)(2) are specific varieties of RFP requirements.

[2] *See also* ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the ''requirements for reasonable further progress * * * will not apply for redesignations because they only have meaning for areas not attaining the standard'') (hereinafter referred to as ''September 1992 Calcagni memorandum'').

any monitor in the area during 1994. All monitors in the Nashville area have less than 1.1 expected exceedance rate. One of the two monitors located in Sumner County recorded 3 exceedances during the 1992–94 period. None of the other monitors in the Nashville ozone nonattainment area have recorded a violation since 1988. Thus, these areas are no longer recording violations of the air quality standard for ozone. A more detailed summary of the ozone monitoring data for the area is provided in the EPA technical support document dated May 19, 1995.

Final Action

EPA determines that the Ashland, Kentucky, Northern Kentucky, Charlotte-Gastonia, North Carolina, and Nashville, Tennessee, ozone nonattainment areas have attained the ozone standard and continue to attain the standard at this time. As a consequence of EPA's determination that the Ashland, Kentucky, Northern Kentucky, Charlotte-Gastonia, North Carolina, and Nashville, Tennessee, areas have attained the ozone standard, the requirements of section 182(b)(1) concerning the submission of the 15 percent plan and ozone attainment demonstration and the requirements of section 172(c)(9) concerning contingency measures are not applicable to the areas so long as the areas do not violate the ozone standard.

The issuance of this determination will have no immediate impact on the way transportation conformity is demonstrated. These areas will continue to demonstrate conformity using the build/no-build test and less-than-1990 test (section 51.436–51.446 of the transportation conformity rule), and the 15 percent SIP if one has been submitted (and attainment/RFP SIP, if one with a budget has been submitted). Since these areas are the subject of conformity determinations pursuant to this action and will not be required to submit RFP or attainment demonstration SIPs, these areas will not generally be in the control strategy period for conformity purposes (i.e., have a control strategy SIP approved and build/no-build test no longer required) for so long as the area does not violate the standard. These areas will not have approved budgets until a maintenance plan is approved as part of the approval of a redesignation request, therefore the build/no-build test and less-than-1990 test, in addition to consistency with any applicable submitted budgets, will be required until maintenance plan approval. (A maintenance plan budget does not apply for conformity purposes until the maintenance plan has been approved, except as provided by section 51.448(i) of the conformity rule (which applies to the Ashland, Kentucky, and Charlotte-Gastonia, North Carolina, areas which were required to submit a 15 percent SIP but submitted a maintenance plan instead).)

The Northern Kentucky area which had previously submitted a 15 percent SIP, and the Nashville, Tennessee, area which had previously submitted 15 percent and attainment SIPs, may choose to withdraw their submitted SIPs through the submission of a letter from the Governors or their designees in order to eliminate the applicability of their motor vehicle emission budgets for conformity purposes. This is because these areas will not be subject to the 15 percent and attainment demonstration requirements of section 182(b)(1) for so long as the area continues to attain the standard. If the respective submitted SIP is not withdrawn, the budget in that submittal will continue to apply for conformity purposes. If the submitted 15 percent or attainment SIP is withdrawn, only the build/no-build and less-than-1990 tests would apply until a maintenance plan is approved.

The Ashland, Kentucky, and Charlotte-Gastonia, North Carolina, areas which are already demonstrating conformity to a submitted maintenance plan pursuant to § 51.448(i) may continue to do so, or may elect to withdraw the applicability of the submitted maintenance plan budget for conformity purposes until the maintenance plan is approved. The applicability may be withdrawn through the submission of a letter from the respective Governor or his or her designee. If the applicability of the submitted maintenance plan budget is withdrawn for conformity purposes, the build/no-build test and less-than-1990 tests will apply until the maintenance plan is approved.

EPA emphasizes that these determinations are contingent upon the continued monitoring and continued attainment and maintenance of the ozone NAAQS in the affected areas. If a violation of the ozone NAAQS is monitored in the Ashland, Kentucky, Northern Kentucky, Charlotte-Gastonia, North Carolina, or Nashville, Tennessee, areas (consistent with the requirements contained in 40 CFR part 58 and recorded in AIRS), EPA will provide notice to the public in the **Federal Register**. Such a violation would mean that the area would thereafter have to address the requirements of section 182(b)(1) and section 172(c)(9) since the basis for the determination that they do not apply would no longer exist.

As a consequence of the determinations that these areas have attained and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) do not presently apply, the sanctions clocks started by EPA on January 28, 1994, for the Ashland and Charlotte-Gastonia areas for the failure to submit a section 181(b)(1) 15 percent plan and attainment demonstration and on April 1, 1994, for the Nashville area for submittal of an incomplete 15 percent plan are hereby stopped as the deficiency for which the clocks were started no longer exists.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action will become effective on August 7, 1995. However, if the EPA receives adverse comments by July 24, 1995, then the EPA will publish a document that withdraws the action, and will address those comments in the final rule on the requested redesignation and SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**.

The Office of Management and Budget exempted this regulatory action from Executive Order 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et. seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. This determination does not create any new requirements, but allows suspension of the indicated requirements. Therefore, because the approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected.

Under Sections 202, 203 and 205 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must undertake various actions in association with proposed or final rules that include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local, or tribal governments in the aggregate.

EPA's final action does not impose any federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act, upon the State. No additional costs to State, local, or tribal governments, or to the private sector, result from this action, which suspends the indicated requirements. Thus, EPA has determined that this final action does not include a mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 21, 1995. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See Section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Nitrogen oxides, Ozone, Volatile organic compounds, Intergovernmental relations, Reporting and record keeping requirements.

Dated: June 9, 1995.

Patrick M. Tobin,

Acting Regional Administrator.

Part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart S—Kentucky

2. Section 52.930 is amended by adding new paragraph (c) to read as follows:

§ 52.930 Control strategy: Ozone.

* * * * *

(c) Determination—EPA is determining that, as of August 7, 1995, the Cincinnati-Hamilton and Huntington-Ashland ozone nonattainment areas have attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the areas for so long as the areas do not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Cincinnati-Hamilton or Huntington-Ashland ozone nonattainment areas, these determinations shall no longer apply.

Subpart II—North Carolina

2. Section 52.1782 is added to read as follows:

§ 52.1782 Control strategy: Ozone.

(a) Determination—EPA is determining that, as of August 7, 1995, the Charlotte-Gastonina ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Charlotte-Gastonia ozone nonattainment area, these determinations shall no longer apply.

(b) [Reserved]

Subpart RR—Tennessee

2. Section 52.2235 is added to read as follows:

§ 52.2235 Control strategy: Ozone.

* * * * *

(a) Determination—EPA is determining that, as of August 7, 1995, the Nashville ozone nonattainment area has attained the ozone standard and that the reasonable further progress and attainment demonstration requirements of section 182(b)(1) and related requirements of section 172(c)(9) of the Clean Air Act do not apply to the area for so long as the area does not monitor any violations of the ozone standard. If a violation of the ozone NAAQS is monitored in the Nashville ozone nonattainment area, these determinations shall no longer apply.

(b) [Reserved]

[FR Doc. 95–15234 Filed 6–21–95; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 282

[FRL–5205–7]

Underground Storage Tank Program: Approved State Program for North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act of 1976, as amended (RCRA), authorizes the U.S. Environmental Protection Agency (EPA) to grant approval to states to operate their underground storage tank programs in lieu of the federal program. 40 CFR part 282 codifies EPA's decision to approve state programs and incorporates by reference those provisions of state statutes and regulations that will be subject to EPA's inspection and enforcement authorities under sections 9005 and 9006 of RCRA subtitle I and other applicable statutory and regulatory provisions. This rule codifies in part 282 the prior approval of North Dakota's underground storage tank program and incorporates by reference appropriate provisions of state statutes and regulations.

DATES: This regulation is effective on August 21, 1995, unless EPA publishes a prior **Federal Register** document withdrawing this immediate final rule. All comments on the codification of North Dakota's underground storage tank program must be received by the close of business on July 24, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register**, as of August 21, 1995, in accordance with 5 U.S.C. 552(a).

ADDRESSES: Comments may be mailed to Jo Taylor, 8HWM-WM, Hazardous Waste Management Division, Underground Storage Tank Program, U.S. EPA Region 8, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466. Comments received may be inspected in the U.S. EPA Region 8 Library, Suite 144, at the above address from 12:00 p.m. to 4:00 p.m., Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Jo Taylor, Underground Storage Tank Program, U.S. EPA Region VIII, 999–18th Street, Suite 500, Denver, CO 80202–2466. Phone: (303) 293–1511.

SUPPLEMENTARY INFORMATION:

Background

Section 9004 of the Resource Conservation and Recovery Act of 1976, as amended, (RCRA), 42 U.S.C. 6991c, allows the U.S. Environmental Protection Agency (EPA) to approve state underground storage tank programs to operate in the state in lieu of the federal underground storage tank program. EPA published a **Federal Register** document announcing its decision to grant approval to North Dakota (56 FR 51333, October 11, 1991). Approval was effective on December 10, 1991.